(2)

No.

In the

Supreme Court of the United States

ANDREW GORE,
Petitioner,

versus

TRANSWORLD AIRLINES, a Delaware corporation; THOMAS J. CLOSSICK, an individual; JAMES NASS, an individual; HAROLD SMALLWOOD, an individual; KENNETH GABRIEL, an individual; ROLLIN O. PARKER, an individual,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES DISTRICT COURT ORDER OF

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MISSOURI

WESTERN DIVISION

ANDREW L. GORE,

Plaintiff, **Case No. 98-0956-CV-W-4**

vs.

TRANS WORLD AIRLINES, INC.,

et al.,

Defendants.

ORDER

Plaintiff Andrew L. Gore (Plaintiff) filed this action against Defendant Trans World Airlines, Inc. (TWA) in state court for alleged false arrest, negligence, defamation and invasion of privacy against TWA and five TWA employees. TWA removed the action to this Court on the ground that Plaintiff's claims are completely preempted by one or more of the following federal laws: the Railway Labor Act, 45 U.S.C. § 151, et. seq.; the Airline Deregulation Act of 1978, as amended, 49 U.S.C. § 41713(b)(1); and the Federal

aviation act, 49 U.S.C. §§ 40101, et seq., including the regulations promulgated thereunder by the Federal Aviation Administration. Currently pending before this Court is Plaintiff's Motion for Remand to state court pursuant to 28 U.S.C. § 1447(a). For the reasons stated herein, plaintiff's motion is denied.

I. FACTS

Plaintiff is employed by TWA as a mechanic at TWA's Maintenance and Engineering Center (the "Overhaul Base") in Kansas City, Missouri. Throughout his employment with TWA, Plaintiff has been a member of the International Association of Machinists and Aerospace Workers, AFL-CIO (the "IAM"). Defendant Harold Smallwood (Smallwood) is also a mechanic at the Overhaul Base. Defendant Thomas J. Clossick (Clossick) is employed by TWA as a Supervisor in the Facilities Maintenance Department at the Overhaul Base and is Plaintiff's immediate supervisor. Defendant Kenneth Gabriel (Gabriel) is also a Supervisor in the facilities Maintenance Department.

Defendant James Nass (Nass) is the Manager of the Facilities Maintenance Department and is the immediate supervisor of Clossick and Gabriel. Defendant Rollin Parker (Parker) is a retired employee of TWA; prior to retirement, Parker was a Supervisor in the Facilities Maintenance Department and reported to Nass.

On the evening of Sunday, December 15, 1996, Plaintiff was working at the TWA Overhaul Base. At approximately 9:00 pm, the Plaintiff and co-worker Howard Cowher (Cowher) were on break and sitting at opposite ends of te lunch table in the break room. Smallwood was in the adjacent room and allegedly overheard Plaintiff stating that he planned to "take out" some TWA employees. ([1]Plaintiff contends that he never made this comment and that Smallwood heard only a small amount of the conversation which he took out of context.) Smallwood reported Plaintiff's alleged comments. Clossick claims that two days earlier another IAM steward had also advised him that Plaintiff made threatening statements. Clossick contends that

he did not take any action at that time because the IAM steward refused to be involved in any disciplinary action against Plaintiff. Having received the call from Gardner, Clossick phoned Nass, who in turn called TWA Employee Relations Manager Paul Davis (Davis). After speaking with Davis, Nass then called Clossick back and told him to go the Overhaul Base, get written statements from Smallwood and Cowher about what Plaintiff had said, and then, if necessary, call the KCI Airport Police. Clossick complied, and thereafter received statements from Smallwood and Cowher. Smallwood's statement reported ([2] Plaintiff argues, but cites no authority in support, that Smallwood's statement, and all other documents submitted by Defendants, are outside the pleadings and should not be considered by the Court in determining the Motion to Remand. Plaintiff's Reply to Defendant's [sic] Suggestions in Opposition to Plaintiff's Motion for Remand p.1. The Court, having found precedent for admitting documents outside the pleadings, will consider the additional documents submitted. *See State of Texas v.*

Alliance Employee Leasing Corp., 797 F.Supp. 542, 544 (N.D. Tex. 1992)(refusing to be confined to the pleadings when determining whether a case should be remanded to state court).):

> ...I was sitting in the room and clearly heard the conversation between Gore [plaintiff] and Cowher. Gore told Cowher he had a lot of anger and was afraid that he was going to snap out. He said he had prepared his wife for the situation if it happened and she was to take the kids and leave town. He said he had thought a lot about it and that he was going to do it at a shift change between the graveyard shift and day shift. Gore said he would only wound some to keep them out of the way and then kill the rest. He also stated that he was going to hell anyway and he may as well go as a General instead of a private. Gore said he wanted to set the record for the most people killed by one person. That the guy down in Texas that killed all those people had the record. He said maybe he could get back into

weight lifting to release his anger...I believe the man may be serious and do feel threatened by this incident and believe Gore needs [psychiatric] evaluation. I think that day shift would feel threatened by this.

Cowher submitted a statement, stating:

During a conversation between myself and Andy Gore, Andy stated that he was very angry and need[ed] to vent his anger before he ended his own life. He stated that he had thought about this and that he would take others with him. Much of this conversation I didn't pay attention to, I really thought it was nothing but B.S. Andy said that he would take as many with him as he could, stating that he thought the best time would be between the graveyard and day shift when there were more people around. He said that he would start in the garage and then work through building 1 and the upper floors. He said that the only thing that had stopped him from doing this already was his wife and children.

Clossick arrived at the base at approximately 11:20

p.m., read the statements, and called the KCI Airport Police. The Airport Police officers arrived, ([3] Plaintiff alleges that Clossick called TWA security and the Airport Police and that five police officers and three TWA security guards reported to the scene and detained him. In contrast, Defendants claim that three police officers arrived at the scene and then went with Clossick and one other supervisor to the garage and asked Plaintiff to accompany them to the Facilities Maintenance Office.) read the statements, went to the garage to find Plaintiff and took him back to the Facilities Maintenance Office. The parties factual account of the subsequent events differ. Plaintiff alleges that he was placed in handcuffs and that the police "conducted several unconstitutional searches" of his person and property and that Clossick and another supervisor interrogated him regarding Cowher and Smallwood's statements. Plaintiff claims that at this time he explained that the statements were taken out of context and that he never intended to harm anyone. Plaintiff contends that Closick and Gardner then "lied to [him] and

told him that they had the right to search his vehicle, his locker, his lunch box, his tool box and tool chest." Plaintiff further contends that he refused to consent to said searches. Defendants claim that neither Clossick nor anyone else with TWA directed the police to handcuff Plaintiff or search him for weapons. Further, Defendants claim that while Plaintiff initially declined to consent to a search, after he conferred with IAM stewards he consented to searches of his locker and vehicle. Subsequently, plaintiff's TWA I.D. badge and parking pass were taken and he was suspended pending a discharge hearing.

Parker arrived at the Overhaul Base at approximately 7:00 a.m. the following morning and was promptly informed of the events that had occurred the previous evening. Parker held a meeting with his crew members wherein he instructed them to call the guard house if Plaintiff attempted to come on the Overhaul Base. Parker claims that he held the meeting in order to protect his crew's safety and to limit the spread of rumors. At approximately 8:00 a.m., Nass called a meeting

with all Facilities Maintenance Supervisors and engineers on duty. At the meeting, Clossick explained what had occurred the previous night and Parker summarized the earlier crew meeting. So that TWA employees could recognize Plaintiff, Plaintiff's TWA I.D. badge was enlarged into an 8.5 inch by 11 inch photocopy, and the photocopies were posted about the TWA facility. Plaintiff claims at this meeting Nass told all those present to warn employees that Plaintiff was a dangerous man. Plaintiff argues that this statement was not and is not true. An additional meeting of about 34-45 employees was held later in the day, wherein Plaintiff's photocopied badge was circulated. Plaintiff was eventually reinstated in his position at TWA and now claims that the actions of Defendants resulted in him being treated "like a pariah by his fellow employees."

On September 29, 1997, Plaintiff filed a Complaint in the United States District Court for the Western District of Missouri against TWA, Clossick, Nass, Smallwood, and Parker alleging violation of his rights under 42 U.S.C. §

1983, libel and slander, negligence, false arrest, and invasion of privacy. On March 3, 1998, the district court granted summary judgment for TWA and Clossick on Plaintiff's claims under 42 U.S.C. § 1983. Having granted summary judgment on the only federal claims in the case, the Court declined to exercise jurisdiction over the supplemental claims under state law and dismissed them without prejudice. In declining to address Plaintiff's state law claims, the Court noted that Plaintiff's Amended Complaint contained no allegations demonstrating that the claims were within thie Court's jurisdiction. The Court did not address whether federal preemption provided a basis for jurisdiction.

Plaintiff re-filed his state law claims in the Circuit Court of Jackson County, Missouri on June 25, 1998. Defendants removed the case to this Court on September 5, 1998. Plaintiff then filed the pending Motion to Remand.

II. DISCUSSION

Defendants based removal of Plaintiff's action upon the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (RLA); the

Airline Deregulation Act of 1978 (as amended) 49 U.S.C. § 41713(b)(1)ADA; and/or the Federal Aviation Act, 49 U.S.C. 40101, *et seq*. (FAA). It is undisputed that if Plaintiff's claims are preempted by any of the above stated federal statutes, then removal of this action to the Western District is proper ([4] See Plaintiff's Motion for Remand). However, Plaintiff contends that his claims of negligence, false imprisonment, libel and slander, and invasion of privacy are not preempted. Therefore, Plaintiff argues that Defendants had no basis under 28 U.S.C. §1441 to remove Plaintiff's action to federal court. For this reason, Plaintiff argues that the case must be remanded back to the Circuit Court of Jackson County, Missouri.

Plaintiff contends that his complaint requires the interpretation of state law only, therefore there is no federal question and consequently, no federal jurisdiction. A case may be removed from state court to federal district court if the action is within the district court's original jurisdiction. 28 U.S.C. §1441(a). In a case where jurisdiction is based on

a federal question, the well-pleaded complaint rule requires that a federal question be presented on the face of a Plaintiff's properly pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

Even if Plaintiff's complaint does not state a federal question on its face, the United States Supreme Court has established a "narrow but significant exception to the well-pleaded complaint rule known as the preemption doctrine." *Schuver v. MidAmerican Energy Co.*, 154 F.3d 795, 798 (8th Cir. 1998). The complete preemption doctrine exception provides that once an area of state law has been "completely pre-empted, any claim purportedly based on that preempted state law is considered, from its inception, a federal claim, and therefore arises under federal law." *Caterpillar Inc.*, 482 U.S. at 393. In sum, the complete preemption doctrine "converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Schuver*, 154 F.3d at 798 (citations omitted) ([5] Further, if any of Plaintiff's state common-law claims are

preempted, the court has federal jurisdiction over the entire action and may not remand the case to state court. *St. John v. International Ass'n of Machinists & Aerospace Workers*, 139 F.3d 1214, 1216-17 (8th Cir. 1998)).

The doctrine of complete preemption applies to state law claims that are preempted by the RLA. *Deford v. Soo Line R.R.*, 867 F.2d 1080, 1085-86 (8th Cir. 1989), *cert. denied*, 492 U.S. 927 (1989). ([6] In 1936, the RLA was extended to cover the airline industry and to establish a mandatory arbitral mechanism to deal with disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." 45 U.S.C. §153(i)). State law claims are preempted by the RLA if the claims are a "minor dispute" within the meaning of the RLA. *Wheeler v. St. Louis Southwestern Ry. Co.*, 90 F.3d 327, 329 (8th Cir. 1996). The RLA provides for a mandatory arbitral mechanism for the "prompt and orderly settlement" of two classes of disputes: major and minor. 45 U.S.C. § 151a. Major disputes relate to

the "formation of collective]bargaining] agreements or efforts to secure them." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994)(citations omiteed). Minor disputes "grow out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." *Hawaiian Airlines Inc.*, 512 U.S. at 253 (citations omitted). Minor disputes involve "controversies over the meaning of an existing collective bargaining agreement in a particular fact situation." *Id.* (citing *Trainmen v. Chicago R.&I.R. Co.*, 353 U.S. 30, 33 (1957)). In sum, major disputes involve the creation of contractual rights, minor disputes enforce them. *Id.* (citations omitted).

To determine whether a dispute is minor, the key inquiry is whether evaluation of the claim in "inextricably intertwined with the consideration of the terms of the labor contract." *Deford*, 867 F.2d at 1086. If the state law "purports to define the meaning of the contract relationship, the law is preempted." *Id.* (citations omitted). Defendants

argue that Plaintiff's claims are preempted by the RLA because Defendants' actions, as TWA employees involved in a security matter, were proscribed by the collective bargaining agreement (CBA). Defendants therefore contend that Plaintiff attempts to avoid RLA preemption and argues that he is "hard pressed to determine how [his] defamation, false imprisonment, negligence and invasion of privacy claims could be conclusively resolved by interpreting any provision under the CBA."

As discussed, if the evaluation of Plaintiff's claims is inextricably intertwined with the consideration of the terms in the CBA, the claims are "minor" and will be preempted. Plaintiff predicates his claims on his rights while at the Overhaul Base and Defendants' allegedly unjustified acts which were performed in response to a security concern at TWA's Overhaul Base. The CBA involved addresses the rights and duties of TWA employees, specifically in regard to security matters. Plaintiff claims that Defendants' acts were unjustified; Defendants' claim that their actions were

justified, even compelled, by the CBA. Clearly then, the evaluation of whether Plaintiff's claims have merit is inextricably intertwined with consideration of terms of the CBA. Plaintiff argues against this finding, stating that "[d]efendants' state that because the collective bargaining agreement authorizes supervisors to investigate safety-related complaints, TWA was justified in handcuffing Plaintiff for two hours and parading him around the airport terminal like a common criminal." ([7] Plaintiff's Reply to Defendant's [sic] Suggestions in Opposition to Plaintiff's Motion for Demand, p.4). This is not the logic employed by the Court. It is clear from the facts of the present case that whether any justification exists for the actions of Defendants is a controversy over the meaning of the CBA in this particular fact situation. Without an analysis of Plaintiff's rights under the CBA as well as Defendants' duties contained therein, a court would be unable to determine whether Defendants' actions could be justified. ([8] The necessity of consulting the CBA to resolve Plaintiff's claims is further evidenced by

additional arguments asserted in Plaintiff's Reply Brief. In disagreeing with Defendants' contention that the CBA gave them a "legal justification" for their actions, Plaintiff argues that "[c]learly, nothing in the collective bargaining agreement legally justifies this type of action." It is inapposite on the one hand to inapposite that the CBA not be interpreted, then on the other, to argue that there is nothing in it which justifies Defendants' actions. As an aside, the Court notes that is an especially interesting argument in light of Plaintiff's statement that he does not have a copy of the CBA.) Plaintiff's claims cannot be decided wholly apart from the CBA and do not present factual issues which do not require interpretation and application of the CBA.

The existence and extent of Plaintiff's rights asserted in the complaint can be determined only by interpreting the CBA. The theme throughout Plaintiff's complaint is that Defendants did not have the right to detain and search him, nor the right to disseminate information about him to other TWA employees. Defendants claim that their actions were in

accordance with their duties and obligations under the CBA, which contains many provisions regarding employees' duties regarding workplace safety and wherein TWA reserves the right to make inspections of employee lockers. Clearly, a state court could not award damages without first construing the CBA and rejecting Defendants' interpretation of the management-rights provisions. When the resolution of state-law claims depends upon an interpretation of the CBA, the claim is preempted. *See Hawaiian Airlines*, 512 at 261 (citing *Lingle v. Norge Div. Of Magic Chef, Inc.*, 486 U.S. 399 (1988); *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962)). Accordingly, because Plaintiff's claims do not involve rights and obligations that exist independent of the CBA, his claim cannot be remanded to state court. The Court is not persuaded by Plaintiff's argument that the issues are "purely factual questions" and therefore require no interpretation of the CBA. The questions presented clearly implicate the duties and rights of TWA employees when presented with a security question. Because a state court

would be unable to award damages without first construing the CBA, specifically the rights and duties assigned therein, Plaintiff's claims are preempted.

III. CONCLUSION

As discussed, the complete preemption doctrine applies to state law claims that are preempted by the RLA. State law claims are preempted by the RLA if they are deemed to be "minor disputes," that is, if they involve controversies over the meaning of an existing collective bargaining agreement. Because Plaintiff's claims involve controversies over the meaning of the collective bargaining agreement, indeed, are inextricably intertwined with several provisions of the agreement, they are preempted. Plaintiff's claims are being preempted, the Court has federal question jurisdiction over them and may not remand the case to state court. Accordingly, Plaintiff's Motion to Remand is DENIED.

/s/ Gary A. Fenner Dated: 4-26-99

GARY A. FENNER, UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MISSOURI

WESTERN DIVISION

ANDREW L. GORE,

Plaintiff, **Case No. 98-0956-CV-W-4**

vs.

TRANS WORLD AIRLINES, INC.,

et al.,

Defendants.

ORDER

Pending before the Court is Trans World Airlines, Incorporated's (TWA) Motion to Dismiss plaintiff's state common law claims because they are "minor dispute" preempted by the Railway Labor Act, 45 U.S.C. § 151, *et seq*. (the RLA). Because this Court has previously determined that plaintiff's state law claims are "minor disputes" and therefore preempted, TWA's motion is granted.

Plaintiff initiated this lawsuit by filing his state law claims in the Circuit Court of Jackson County, Missouri on

June 25, 1998. TWA removed the case to this Court on September 5, 1998, asserting that this Court had removal jurisdiction because plaintiff's claims were completely preempted by one or more of the following federal laws: the RLA; the Airline Deregulation Act of 1978, 49 U.S.C. § 41713(b)(1); and the Federal aviation Act, 49 U.S.C. §§ 40101, *et seq*. On October 15, 1998, plaintiff moved to have the case remanded, asserting that his claims were not preempted by federal law. On February 2, 1999, this Court denied plaintiff's motion to remand, finding that plaintiff's claims were inextricably intertwined with several provisions of the RLA, and thus preempted by the RLA.

In its February 2, 1999 Order, this Court found that plaintiff's claims are "minor disputes" under the RLA. Minor disputes are within the exclusive jurisdiction of the system of adjustment boards, therefore, this Court is without justification to hear these claims and they must be dismissed. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994).

Plaintiff argues that this Court's analysis and

reasoning in the February 2, 1999 Order, wherein the Court found that plaintiff's claims were "minor disputes" is erroneous. Thus, plaintiff urges the court to reconsider this finding. The issues now before the Court are identical to those considered by the Court in issuing its February 2nd Order. Having fully addressed the issues in its February 2nd Order, the Court declines to do so again. Therefore, because the issues involved have been addressed and because there is no basis for the Court to alter its initial finding, the Court declines plaintiff's invitation to reconsider its February 2nd Order. Therefore, because plaintiff's claims are preempted by the RLA, TWA's Motion to Dismiss is granted and plaintiff's Motion to Remand is denied.

Dated: 4-26-99

/s/ Gary A. Fenner

GARY A. FENNER

UNITED STATES DISTRICT JUDGE